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In the Supreme Court of the United States

OCTOBER TERM, 1992

DONALD NEAL RAKE, ET AL., PETITIONERS

v.

WILLIAM J. WADE, TRUSTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The United States will address the following question:

Whether the Bankruptcy Code requires payment of interest to oversecured creditors when a Chapter 13 case defers their right to collect past-due payments.

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INTEREST OF THE UNITED STATES

This case presents the question whether the Bankruptcy Code requires payment of interest to oversecured home mortgage lienholders to compensate them for the delay they suffer when a Chapter 13 case defers their right to collect past-due payments. The Court's analysis of that question is likely to affect the availability of interest to all oversecured creditors in Chapter 13 cases. That underlying question is of great interest to the United States because its resolution will affect the availability of interest payments to any creditor holding a long-term obligation against a

debtor that goes through a Chapter 13 bankruptcy, and because various agencies of the federal government—including the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Small Business Administration, the Farmers Home Administration, and the Department of Veterans Affairs—frequently hold such claims.

STATUTORY PROVISIONS INVOLVED

Sections 506(b), 1322(b)(2) and 1322(b)(5), and 1325(a)(5) of the Bankruptcy Code, 11 U.S.C. 506(b), 1322(b)(2) and (5), and 1325(a)(5), are set forth in an appendix, *infra*, 1a-2a.

STATEMENT

1. This case arises out of three separate bankruptcy cases in the United States Bankruptcy Court for the Northern District of Oklahoma. In each case, the debtor at the time of the filing was in arrears on a long-term promissory note held by respondent, payment of which was secured by a home with a value greater than the outstanding balance on the note. The bankruptcy court in each case approved a plan under which the debtor would continue to make current payments due under the note and would cure the arrearages by a schedule of monthly payments over the term of the plan, without interest. For example, the plan approved for petitioners Donald and Linda Rake allowed them to cure $1800 of arrearages by 24 monthly payments of $75 each. J.A. 4; see Pet. App. A13-A15. The plan approved for petitioners Ernest and Mary Yell allowed them to cure $866 of arrearages by 48 monthly payments of $18.04 each. J.A. 20; see Pet. App. A16-A17. Finally, the plan approved for

Ronnie and Rosetta Hannon [1] allowed them to cure $1513.80 of arrearages by 60 monthly payments. Pet. App. A9; see *id.* at A7-A12.[2]

2. Respondent appealed the three cases to the district court, which consolidated them and affirmed. Pet. App. A18-A25. The district court noted that the Sixth Circuit had held that oversecured creditors in Chapter 13 cases are entitled to interest on arrearages on home mortgages, but chose instead to follow the Ninth Circuit's rule, which bars payment of interest in such cases. *Id.* at A-19-A24. The court concluded:

> Congress determined the treatment to be afforded the curing of defaults in Chapter 13 proceedings in §§ 1322(b)(2) and 1322(b)(5). These sections do not alter the contract between the parties governing such matters as the interest, if any, to be paid on arrearage. Since the contracts between the parties in the appeals at issue provide that penalties for late payments are limited to 5%, not to exceed $5 per delinquent payment, any other amount of interest would be improper.

Id. at A24.

3. The court of appeals reversed. Pet. App. A26-A40. The court explained that decisions barring the payment of interest rest on three propositions, none of which it found to be persuasive. First, the court

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[1] Because the Hannons did not join in the petition, they are respondents in this Court under this Court's Rule 12.4.

[2] The Hannons' plan did allow for interest with respect to sums due the lienholder for insurance and taxes, because the mortgage expressly provided for payment of interest on delinquent sums of that sort. Pet. App. A9.

rejected the notion that a plan granting a borrower an extended time period to cure defaults does not modify the mortgagee's rights under its contract; the court found it insupportable to conclude that "abrogating cure periods, acceleration clauses, and foreclosure rights under a contract is not [modification]." *Id.* at A36-A37. Second, the court rejected the notion that "mortgagees are responsible for their losses because they did not protect themselves by adding a provision in their contracts requiring interest on arrearages." *Id.* at A37. The court noted that the plans at issue here

> alter[ed] material terms of the contractual cure, changing the very essence of the cure * * * [by] permitting arrearages to be paid over time instead of as one lump sum, and denying the foreclosure remedy the mortgagees typically would use to recover their money quickly * * *. It seems wholly unreasonable to eviscerate the contract provisions of acceleration and foreclosure and then find binding the absence of a term regarding interest on arrearages.

Ibid. Finally, the court rejected the reliance of other courts on "legislative history and presumed congressional intent without making any express finding that the Bankruptcy Code is ambiguous on the interest question." *Id.* at A38-A39. The court stated that it did "not perceive any ambiguity in the statute that permits resort to legislative history," and, in any event, that the legislative history is not helpful because it contains "no reference to interest or arrearages, or anything that would require these creditors to be treated less charitably than other over-secured creditors." *Id.* at A39. Accordingly, the court

> join[ed] the Sixth Circuit in holding that in Chapter 13 plans, an over-secured mortgagee of the debtor's personal residence is entitled to post-petition interest on arrearages and other charges even if the mortgage instruments are silent on the subject and state law would not require interest to be paid.

Id. at A40.

INTRODUCTION AND SUMMARY OF ARGUMENT

Chapter 13 of the Bankruptcy Code, 11 U.S.C. 1301-1330, establishes a process for adjustment of the debts of individuals with regular income. Pursuant to 11 U.S.C. 109(e), relief under Chapter 13 generally is available only to individuals "with regular income" who, on the date of filing, owe less than $100,000 of unsecured debts and less than $350,000 of secured debts. Chapter 13 allows individuals to reorganize their debts by obtaining judicial approval of a plan adjusting their obligations.

One significant power that Chapter 13 grants to debtors is the right to cure defaults on long-term debts pursuant to Section 1322(b)(5). That provision—limited to debts "on which the last payment is due after the date on which the final payment under the plan is due"—states that a Chapter 13 plan may "provide for the curing of any default within a reasonable time," but only if the plan also provides for "maintenance of payments while the case is pending." Accordingly, debtors regularly have proposed plans, such as the plans at issue here, that include provisions requiring a default on a long-term debt to be cured by scheduled payments over a period of

months or years.[3] The question in this case is whether, in the absence of a specific agreement of the parties, the Bankruptcy Code requires such a plan to compensate the creditor for the delay in receiving payment of the arrearages.

1. Because the value of the collateral securing repayment of the mortgages at issue in this case exceeds the amount of the debts owed to respondent, respondent has an allowed secured claim for the entire amount of the arrearages under Section 506(a) of the Code. Similarly, to the extent the value of the collateral exceeds the total amounts due to respondent at the time of filing, Section 506(b) of the Code, as interpreted in *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240-249 (1989), grants respondent a right, without regard to any preexisting agreements, to interest on its claims during the period while the court develops a plan for adjusting petitioners' debts. Finally, because respondent's claims are "provided for by the plan[s]" at issue in this case, Section 1325(a)(5), respondent is entitled to interest on those claims under the plans, to compensate him for the delay imposed by the plans on his right to collect payment.

2. Nothing in Section 1322(b) justifies a different result for home mortgage lienholders. Section 1322(b)(2) does prohibit plans that modify the rights of home mortgage lienholders, but that provision was intended only to prevent detrimental modifications

[3] Although we doubt that the plans in this case required the defaults to be cured "within a reasonable time"—the plans allowed the defaults to be cured over periods as long as five years—that question is not within the scope of the review granted by this Court. See Pet. i (setting forth questions presented).

of the rights of home mortgage lienholders. Moreover, Section 1322(b)(5) provides a specific exception from Section 1322(b)(2), permitting whatever modifications are necessary to permit debtors to effect a cure of pre-petition defaults within a reasonable time. To the extent other provisions of the Bankruptcy Code require the debtor to pay interest as part of the cure permitted by Section 1322(b)(5), the requirement that home mortgage lienholders pay interest does not violate Section 1322(b)(2).

Nor does Section 1322(b)(5) implicitly repeal Section 506(b) with respect to cures of long-term debts in Chapter 13 cases. On its face, Section 506(b) requires courts to allow a claim for interest to compensate oversecured creditors for the delay occasioned by the pendency of a bankruptcy case. Section 1322(b)(5) is not in tension with Section 506(b) in any way. It simply provides that debtors can cure arrearages on certain long-term debts; it does not establish the terms of the cure or override other provisions of the Code that require monetary payments to secured creditors to compensate them for the delay in payment occasioned by bankruptcy cases.

Similarly, there is no basis in the Code for the position that an oversecured creditor whose claim is affected by a cure under Section 1322(b)(5) is not entitled to protection under Section 1325(a)(5). Section 1325(a)(5) applies to all claims "provided for" by the plan. When a plan defers a creditor's contractual right to seek immediate payment, it plainly "provide[s] for" the claim. Accordingly, whenever a plan allows a debtor to cure a default on an allowed secured claim by payments extending beyond confirmation, the creditor is entitled to compensation under Section 1325(a)(5).

3. Finally, practice under the old Bankruptcy Act does not support a contrary result. This Court in *Ron Pair* addressed the question of preconfirmation interest and concluded that Section 506(b) requires payment of such interest. With respect to postconfirmation interest, it is clear that courts in a case under the old Chapter XIII could not have forced a secured creditor to accept any plan allowing a debtor to repay past-due arrearages over time without interest, because a court could not approve any plan without the approval of all secured creditors "dealt with by the plan." 11 U.S.C. 1052(1) (1976). Because Congress plainly rejected that rule when it enacted Section 1325(a)(5) of the Code—which allows approval of a plan over the objection of the secured creditor if, *inter alia*, the creditor receives payments equal to the value of his collateral—the pre-Code rule has little probative value in determining the scope of the existing law. But it cannot support a rule allowing courts to approve plans that do not provide for the holders of allowed secured claims to receive payments having a present value equal to the value of those claims.

ARGUMENT

CHAPTER 13 OF THE BANKRUPTCY CODE REQUIRES PAYMENT OF INTEREST TO AN OVERSECURED CREDITOR WHEN A CHAPTER 13 CASE DEFERS THE CREDITOR'S RIGHT TO COLLECT PAST-DUE PAYMENTS

A. Sections 506(b) And 1325(a)(5) Of The Bankruptcy Code Require Payment Of Interest To All Oversecured Creditors Whose Rights To Collect Past-Due Payments Are Deferred By The Bankruptcy Filing

The statutory analysis starts by characterizing the claim, which involves three steps. First, the creditor's right to receive payment of arrearages that are outstanding on the date the bankruptcy is filed is a "claim" for purposes of Section 101(4)(A).[4] Second, unless a party objects on the basis of one of the grounds set forth in Section 502(b), the claim will be allowed under Section 502(a). Third, if the value of the collateral exceeds the amount of the claims secured by the collateral, the claim will be an allowed secured claim under section 506(a).

The next question under the statute is whether the creditor is entitled to interest from the date the case is filed until the effective date of the plan ("preconfirmation" interest). As this Court has made clear,

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[4] That provision defines "claim" to include any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." As the Court has noted, "Congress intended by this language to adopt the broadest available definition of 'claim.'" *Johnson* v. *Home State Bank*, 111 S. Ct. 2150, 2154 (1991); see *Pennsylvania Department of Public Welfare* v. *Davenport*, 495 U.S. 552, 558 (1990) (discussing legislative history).

Section 506(b) resolves that question by granting an allowed claim for interest to oversecured creditors holding allowed secured claims, without regard to the provisions of any agreement between the creditor and the debtor. See *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240-249 (1989).[5] That provision makes sense because, at least with respect to oversecured creditors, it is only fair to compensate the creditor for the time value of money it has lost by having its rights to pursue the collateral deferred by the pendency of the bankruptcy case. Accordingly, unless the debtor pays interest on the arrearages during the period between the bankruptcy filing and the effective date of the plan, the amount of the creditor's allowed secured claim for arrearages will increase during the adjudication of the case to include interest accruing on the arrearages during that time period.[6]

[5] See Lynn M. LoPucki, *Strategies for Creditors in Bankruptcy Proceedings* § 16.4.9, at 929-930 (2d ed. 1991) (discussing the availability of preconfirmation interest under Chapter 13 in light of *Ron Pair*) [hereinafter LoPucki]. Of course, the creditor is entitled to interest only "to the extent" that the value of the property exceeds the claim, so interest would stop accruing when the total amount due on the claim equalled the value of the collateral. See LoPucki, *supra*, at 930.

[6] Petitioners contend (Pet. Br. 21-22) that even if Section 506(b) allows interest on the underlying debt, it does not allow interest on other charges due to the creditor under the agreement. That contention is incorrect. Section 506(b) applies to a creditor who has "an allowed secured claim," and provides for "interest on such claim." Hence, to the extent the creditor has an allowed secured claim for charges other than the original debt—a matter that depends on the contract of the parties and Section 502—it is entitled to preconfirmation interest under Section 506(b).

The final question is whether the creditor is entitled to interest after the effective date of any plan confirmed by the bankruptcy court ("postconfirmation" interest).[7] The answer to that question appears in Section 1325(a), which, among other things, sets forth the minimum amounts a plan must pay creditors to be confirmable under Chapter 13. In particular, Section 1325(a)(5) provides, with respect to any "allowed secured claim provided for by the plan," that the debtor may retain the collateral over the creditor's objection only if the plan provides for two things: (a) that the creditor retain its lien, Section 1325(a)(5)(B)(i), and (b) a schedule of payments with a discounted present value equal to the total amount of the creditor's allowed secured claim as of the effective date of the plan, Section 1325(a)(5)(B)(ii).[8]

[7] Although Section 506(b) on its face does not state that its effect is limited to the period before confirmation, the structure of the provision seems to require that conclusion. Because the provision has the effect of allowing a claim to the creditor, and because no new claims can be allowed to the creditor after the plan is confirmed, it seems clear that the rights granted under Section 506(b) are relevant only until confirmation of the plan.

[8] Section 1325(a)(5)(B)(ii) requires that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." As a general matter, this effectively requires the payment of some form of interest to compensate the creditor for the delay imposed by the plan, because a stream of payments over time in a total amount equal to the amount of the allowed secured claim would have a lower "value, as of the effective date of the plan," than a single payment on the effective date in the amount of the allowed secured claim. As Professors Warren and Westbrook explain:

As discussed above, the creditor's claim for arrearages is an "allowed secured claim." Pursuant to Section 506(b), the amount of that claim is augmented (to the extent the creditor is oversecured) by an allowed secured claim for interest accruing during the period the case is adjudicated. Finally, the claim is "provided for by the plan," because the plan establishes a schedule of payments to cover the claim. Accordingly, Section 1325(a)(5) by its terms entitles the creditor to compensation for the deferral the plan imposes on the credtiors' right to collect the arrearages.

B. Sections 1322(b) and 1325 Of The Bankruptcy Code Do Not Prohibit Interest Payments To Holders Of Home Mortgages

The arguments offered by petitioners and the lower court decisions denying interest rest on three propositions about Sections 1322(b) and 1325: (1) payment of interest to a home mortgage lienholder that is not required by a contract with the lienholder constitutes

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The concept of "present value" [in Section 1325(a)(5)(B)(ii)] reflects the elementary proposition that a dollar paid a year from now is worth less than a dollar paid now. Absent bankruptcy, the secured creditor would be allowed to repossess and sell the collateral today. The creditor would then have that money available for another investment. Because the creditor receives deferred payments over time, the Code gives the creditor the right to receive interest on that amount.

Elizabeth Warren and Jay Lawrence Westbrook, *The Law of Debtors and Creditors* 312 (2d ed. 1991). For descriptions of the process of calculating the precise amount due to creditors under the provision, see *id.* at 312-313; LoPucki, *supra* note 5, § 16.8.2, at 957-960.

a modification of the creditor's rights somehow forbidden by Section 1322(b)(2);[9] Section 1322(b)(5) implicitly bars the payment of preconfirmation interest pursuant to Section 506(b);[10] or (3) Section 1325(a)(5) only protects a creditor whose rights are modified and does not apply when the debtor "cures" the default under Section 1322(b)(5).[11] None of those propositions is consistent with the language and structure of Sections 1322 and 1325.

1. Section 1322(b)(2) establishes a general rule that a Chapter 13 plan may not alter the rights of a secured creditor whose collateral is a debtor's home, by providing that a Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." But Section 1322(b)(5) creates a significant exception to the rule set forth in Section 1322(b)(2), providing that "notwithstanding paragarph (2) of this subsection," the plan may "provide for the curing of any default [on a long-term debt] within a reasonable time." In sum,

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[9] See *Foster Mortgage Corp.* v. *Terry (In re Terry)*, 780 F.2d 894, 896-897 (11th Cir. 1986); *Landmark Financial Services* v. *Hall*, 918 F.2d 1150, 1154 (4th Cir. 1990); see also *Cardinal Federal Savings & Loan Ass'n* v. *Colegrove (In re Colegrove)*, 771 F.2d 119, 123-124 (6th Cir. 1985) (Celebrezze, J., dissenting). Petitioners apparently do not press that argument.

[10] See Pet. Br. 9-11.

[11] See Pet. Br. 14-17; *Shearson Lehman Mortgage Corp.* v. *Laguna (In re Laguna)*, 944 F.2d 542, 544-545 (9th Cir. 1991), cert. denied, 112 S. Ct. 1577 (1992); *Hall*, 918 F.2d at 1153-1154; *In re Capps*, 836 F.2d 773, 775-776 (3d Cir. 1987).

although Section 1322(b)(2) generally prohibits Chapter 13 plans that modify the rights of home mortgage lienholders,[12] Section 1322(b)(5) does allow modifications necessary to allow the debtor to cure any default within a reasonable time.

Those provisions cannot plausibly be read to prohibit the payment of interest called for by other provisions of the Code. First, Section 1322(b)(2) was directed at modifications harmful to the creditor; it seems most unlikely that Congress intended that provision to bar plans that increased the rights of a creditor. Moreover, even if the payment of the interest at issue in this case were construed to be a modification covered by Section 1322(b)(2), it would be permitted by the express terms of Section 1322(b)(5), which permits a plan to provide for a cure "notwithstanding [Section 1322(b)(2)]." To the extent other provisions of Title 11—in particular, Sections 506(b) and 1325(a)(5)—require the debtor to compensate the creditor for the delay occasioned by the passage of time before the default is cured, a provision requiring the payment of interest is a necessary part of the cure permitted by Section 1322(b)(5). Accordingly, Section 1322(b)(2) does not bar the payment of interest.

2. Section 1322(b)(5) permits a plan to "provide for the curing of any default within a reasonable time." Petitioners argue (Pet. Br. 9-11) that by permitting debtors to cure defaults, the Code implicitly bars the payment of interest otherwise due under Section 506(b). The plain language of the statute rebuts that argument. Section 506(b), as construed in *Ron Pair*, requires the court to grant a creditor an allowed secured claim for interest on an allowed secured claim to compensate the creditor for the delay in pay;ment occasioned by the pendency of the bankruptcy case.[13] Because Section 1322(b)(5) simply permits the debtor to "cur[e] any default within a reasonable time," and does not itself set forth the terms for curing the default, Section 1322(b)(5) is not inconsistent with Section 506(b) and thus the interest provided under Section 506(b) must be paid to compensate creditors for the delay occasioned by a cure permitted by Section 1322(b)(5).[14]

[12] This Court has granted a writ of certiorari in *Nobelman* v. *American Savings Bank*, No. 92-641 (Dec. 7, 1992), to consider whether Section 1322(b)(2) permits bankruptcy courts to alter the portion of a home mortgage creditor's claim that exceeds the value of the creditor's collateral. We express no view on that question.

[13] Petitioners suggest (Pet. Br. 12-13) that *Ron Pair*'s interpretation of Section 506(b) does not apply in Chapter 13 proceedings, or with respect to the cure of a default on a long-term debt in a Chapter 13 proceeding, pointing out that neither of those circumstances were present in *Ron Pair*. Petitioners do not, however, identify any reason to believe that either of those circumstances are relevant under Section 506(b), the terms of which flatly require courts to allow a claim for preconfirmation interest to oversecured creditors, without regard to the chapter under which the case was filed. Compare 11 U.S.C. 103(a) ("[With an exception not relevant here], chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title.").

[14] For similar reasons, petitioners err in arguing (Pet. Br. 17-20) that the terms of the cure under Section 1322(b)(2) are determined exclusively under nonbankruptcy law. Section 506(b) plainly offers two bases for payment of preconfirmation interest. The first depends on the contractual agreement

3. As discussed above, Section 1325(a)(5)(B)(ii) provides that a court can confirm a plan that allows the debtor to retain collateral over the objection of a secured creditor only if the plan requires payments to the creditor with a present value equal to the amount of the creditor's allowed secured claim. Contrary to the suggestion of some of the lower courts, see note 11, *supra*, the provision applies of its own force to creditors whose rights are adversely affected by a cure imposed under Section 1322(b)(5). On its face, the provision applies to "each allowed secured claim provided for by the plan." Section 1325(a)(5). Whatever play there may be in that language, a plan certainly "provide[s] for" a claim when it imposes a schedule of payment that defers rights to collect payment that existed under the agreement of the parties before the bankruptcy. In this case, petitioners owed respondent back mortgage payments, all of which were immediately due and payable at the time the bankruptcies were filed. The plans

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of the parties, a matter generally determined under state law. See Section 506(b) (requiring court to allow a claim for "any reasonable fees, costs, or charges provided for under the agreement under which such claim arose"). The second—the provision at issue in *Ron Pair*—provides interest automatically, without regard to state law. Similarly, Section 1325(a)(5) recognizes that bankruptcy plans may impose delays on payment that would not be permissible under the agreement of the parties. If a plan imposes such a delay on payment of a secured claim, it must compensate the creditor for the delay, without regard to provisions of state law concerning payment of interest on the claim in a nonbankruptcy setting. Put another way, the Supremacy Clause of the Constitution, Art. VI, Cl. 2, prevents state laws from prohibiting the payment of interest required by the Bankruptcy Code.

established schedules of repayment that deprived respondent of its right to full and immediate payment (enforceable by a right to foreclose) and substituted a right to a series of monthly payments over periods ranging from 24 to 60 months. See J.A. 4, 20; Pet. App. A9 (provisions of Chapter 13 plans providing for payment of arrearages owed to respondents). That alteration of respondent's rights may have been permissible under Section 1322(b)(5), but there is no plausible basis, in the text of the Bankruptcy Code or elsewhere, for the suggestion that the plans effecting that alteration did not "provid[e] for" respondent's claims. Accordingly, Section 1325(a)(5) entitles respondent to compensation for the delay imposed by the plans.[15]

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[15] As our discussion suggests, we believe that the language of the Bankruptcy Code is so clear that recourse to the legislative history is unnecessary. In any event, the legislative history sheds little light on the question whether Sections 1322(b)(2) and 1322(b)(5) should be construed as enacting a rule especially disfavoring home mortgage lienholders seeking interest. The special treatment for home mortgage lienholders did not appear in the House Bill, H.R. 8200, 95th Cong., 1st Sess. (1977), but a broader form of the provision did appear in Section 1322(b)(2) of the Senate Bill, S. 2266, 95th Cong., 2d Sess. (1978), which prevented modification of secured "claims wholly secured by mortgages on real property." The Senate Report does little more than paraphrase that provision. See S. Rep. No. 989, 95th Cong., 2d Sess. 12-13, 141 (1978). There is no committee report explaining why Congress chose to enact a modified version of the Senate bill, but Senator DeConcini and Representative Edwards each introduced into the Congressional Record for his respective Chamber detailed comments explaining in substantially identical terms that the final provision—which limits the special treatment to home mortgage lienholders—"represents a compromise agreement

C. The Treatment Of Secured Creditors Before Passage Of The Bankruptcy Code Does Not Support A Bar On Interest Payments To Oversecured Creditors Adversely Affected By A Chapter 13 Plan

Finally, some authorities have suggested that practice under the old Bankruptcy Act justifies denying interest to oversecured creditors in the absence of an express agreement allowing interest. See *In re Capps*, 836 F.2d 773, 777 n.9 (3d Cir. 1987) (citing 5 *Collier on Bankruptcy* ¶ 1322.09[4], at 1322-25 (Lawrence P. King 15th ed. 1992) [hereinafter *Collier*]). That suggestion is incorrect for two reasons. First, the authorities on which *Collier* relies held only that a referee in a Chapter XIII proceeding could enjoin foreclosure pending cure; they did not hold that the court also could defer the schedule for past-due payments without compensating an oversecured creditor for the delay.[16] In any event, analy-

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between similar provisions in the House bill and Senate amendment," and that "[i]t is intended that a claim secured by the debtor's principal residence may be treated with under section 1322(b)(5)." 124 Cong. Rec. 32,409, 34,009 (1978). Hence, nothing in the legislative history contradicts the plain meaning of the controlling statutory text.

[16] The two authorities cited by *Collier* (see *Collier, supra*, ¶ 1322.09[4], at 1322-25 n.27, ¶ 1322.09[2], at 1322-22 nn.13-14) are *Hallenbeck* v. *Penn Mutual Life Insurance Co.*, 323 F.2d 566 (4th Cir. 1963), and *In re Garrett*, 203 F. Supp. 459 (N.D. Ala. 1962). In *Hallenbeck*, the court of appeals concluded that the bankruptcy referee had the power to enjoin a foreclosure, but noted that "the owner of the secured indebtedness must not be required to accept less than the full periodic payments specified in his contract," 323 F.2d at 572, and remanded the case for further proceedings to determine whether an injunction would be appropriate, *id.* at 574. Similarly, in *In re Garrett* there apparently were no arrearages

sis of pre-Code practice in light of the provisions of the new Bankruptcy Code makes it clear that the pre-Code practice provides no support for a rule barring either preconfirmation interest or postconfirmation interest.

First, with respect to preconfirmation interest, this Court itself has noted the lack of certainty under pre-Code practice regarding the circumstances under which preconfirmation interest was available to oversecured creditors. See *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 246-249 (1989). But whatever the pre-Code practice might have been, this Court concluded that Congress resolved the question in the creditor's favor by enacting Section 506(b), which makes interest available as a matter of federal law even if the debtor has not expressly contracted to pay it. See 489 U.S. at 240-243. Neither petitioners nor any of the lower courts have identified any reason to believe that pre-Code practice would support a different rule for lienholders whose collateral is a home. Accordingly, the pre-Code practice cannot support a rule barring the payment of preconfirmation interest to oversecured home mortgage lienholders.

With respect to postconfirmation interest, the dramatically different nature of pre-Code proceedings makes the relevance of the pre-Code practice quite limited. Under the old Bankruptcy Act, it is clear that a court could not properly have forced a secured creditor

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at all; the plan approved by the court required the contractually scheduled payments to be made on a monthly basis. Thus, neither of those cases clearly authorized a plan deferring a secured creditor's right to collect arrearages, much less a plan deferring the creditor's right to collect without providing for payment of interest to compensate for the delay.

to accept a Chapter XIII plan that deferred the creditor's right to collect past-due payments at all, much less a plan that deferred those payments without compensating the secured creditor for the delay. Section 652(1) of the Bankruptcy Act, 11 U.S.C. 1052(1) (1976), barred a debtor in a Chapter XIII proceeding from filing any plan unless it had "been accepted in writing * * * by the secured creditors whose claims [we]re dealt with by the plan." Hence a Chapter XIII plan could not alter the rights of any secured creditor without that creditor's consent.[17] Because Chapter 13 of the Bankruptcy Code adopted a quite different scheme, which allows courts to adopt a plan over the objections of a secured creditor—but only if it either returns the collateral to the creditor or offers payments with a present value equal to the creditor's allowed secured claim—the pre-Code practice has little relevance in determining the scope of the alterations permitted under current law. But the stringent protections given secured creditors under the old system certainly cannot support the notion that bankruptcy proceedings should not require debtors to pay interest to oversecured creditors whose rights to collect from their debtors are deferred by a Chapter 13 plan.

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[17] For a detailed description, see Richard E. Poulos, *The Secured Creditor in Wage Earner Proceedings: Dream Versus Reality*, 44 Nat'l Ass'n Ref. Bankr. 68, 73-76 (1970); see also Vern Countryman, *Partially Secured Creditors Under Chapter XIII*, 50 Am. Bankr. L.J. 269, 270 (1976) ("[B]efore a plan can be confirmed, § 652 requires that it be accepted by * * * each secured creditor whose claim is dealt with by the plan."); *Collier, supra*, ¶ 1325.06[1], at 1325-30 to 1325-32 (Supp. 1992).

At its heart, this case involves a principle fundamental to the Bankruptcy Code: Although bankruptcy courts have flexibility in determining how to treat secured creditors, they cannot approve plans of reorganization that do not promise to give such creditors property with a present value equal to the total amount of their secured interest in the debtor's property. Nothing in the Code supports the notion that home mortgage lienholders should be singled out and denied this protection; to the contrary, if anything, Congress singled them out for special protective treatment. The decision of the court of appeals correctly applied the relevant provisions of the Code and thus should be upheld.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. Section 506(b) of the Bankruptcy Code, 11 U.S.C. 506(b), provides:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

2. Section 1322(b) of the Bankruptcy Code, 11 U.S.C. 1322(b), provides, in pertinent part:

> Subject to subsections (a) and (c) of this section, the plan may—
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> * * * * *
>
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;
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> * * * * *
>
> (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;
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> * * * * *

3. Section 1325(a)(5) of the Bankruptcy Code, 11 U.S.C. 1325(a)(5), provides:

> Except as provided in subsection (b), the court shall confirm a plan if—
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> * * * * *
>
> (5) with respect to each allowed secured claim provided for by the plan—
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> (A) the holder of such claim has accepted the plan;
>
> (B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and
>
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or
>
> (C) the debtor surrenders the property securing such claim to such holder.

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